

PUBLIC LAW BOARD NO. 1925

Award No. 17

Case No. 17

Parties Brotherhood of Maintenance of Way Employees
to and
Dispute Southern Pacific Transportation Company
 -Texas and Louisiana Lines-

Statement of Claim: 1. Carrier violated the effective Agreement by unfairly and without just cause dismissed from its service on November 5, 1976, Apprentice Foreman W. J. Scott.

 2. Claimant Scott shall be reinstated to his former position with all seniority, vacation rights, insurance coverage and any other rights due him, unimpaired, in addition to all compensation lost commencing November 5, 1976 and to run concurrently until Claimant Scott is restored to the services of the Southern Pacific Transportation Company.

Findings: The Board finds, after hearing upon the whole record and all evidence that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 23, 1977, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant was an Apprentice Foreman, and formerly worked as such out of Carrier's Lufkin District. He was dismissed by his Division Engineer, November 5, 1976, for falsifying his expense account ending September 20, 1976 by charging a hotel room at Shreveport, Louisiana, for several dates in August and September 1976 when in fact he had not registered or stayed there, but instead had stayed in a private home. Said act resulted in a violation of Rule 801. Rule 801 of the General Rules and Regulation for the Maintenance of Way and Structures in pertinent part provides:

"Employees....will not be retained in service who are..."dishonest"....

An investigation, as requested, was held thereon. As a result thereof Claimant's dismissal was upheld.

The Board finds Claimant received a fair and impartial hearing. The record provides sufficient credible and competent support for Carrier's conclusion as to Claimant's culpability. This is particularly so when Claimant admitted therein that the charges made against him were correct.

However, the Board finds circumstances herein which serve to mitigate the discipline imposed. Claimant's service record was excellent.

Claimant, according to Carrier's witness, was admitted to being an honest man. Carrier's Expense account instructions are, as previously pointed out in Awards 14 and 15 of this Board, silent or vague as it relates to, as here, an employee who is away from headquarters and who is entitled to expenses, but who chooses to stay in a private home. Such instructions should be corrected to avoid similar situations occurring in the future and thereby leave only those situations where the act is otherwise clearly committed with an intent to defraud, or may be considered as an act of theft by taking. Also, there appears much more merit to Claimant's assertion that he was told by his Roadmaster to put in Lodging expenses for two (2) nights per week in order that Claimant could thereby make up for the cost of operating his automobile which the Roadmaster could not or would not otherwise authorize. The Roadmaster was aware of Claimant's use of his own automobile on company business and his approval of Claimant's expense account could be so interpreted.

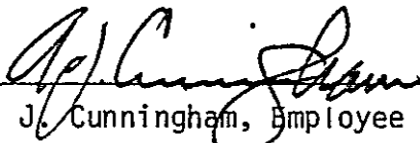
Consequently, while agreeing that Claimant was technically guilty of violating Rule 801 the circumstances are such that such should be held to be not willful. Claimant will therefore be restored to service with his seniority rights unimpaired, but without any pay for the time held out of service subject to successfully passing a return to service physical examination.

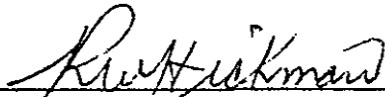
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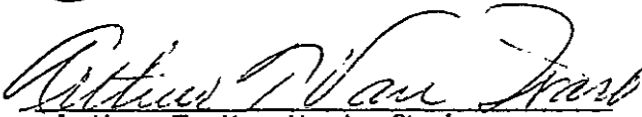
Reference to the word "dishonesty", if any on his service record should be expunged therefrom.

Award: Claim disposed of as per findings.

Order: Carrier is directed to make this Award effective within thirty (30) days of date of issuance shown below.


A. J. Cunningham, Employee Member


R. W. Hickman, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued at Houston, Texas, May 8, 1978.